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Attorneys for Defendants

5 MIKE SEADLER, CLYDE CHENG, ALEX TORKE,
6 ALAN WOLF, STEVEN MAJOROS, TYSON SHEARER,
7 JOHNNY FANUCCHI, TRAVIS NIESEN, MARTIN OVER,
8 DAN WINTER, ALAEC LANGE, ROBERT CIRAURO,
JOHN MASTILOCK, ANTHONY LAYTON,
JOHANNA GREEN, DEREK RUSH, FRANK SAUNDERS,
DAVID MACHADO, JOE OLIVER, BRYAN STERKEL
AND CITY OF SANTA CLARA

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

13 NANCY NAVA,) Case No. C08 03066 PVT
14 Plaintiff,)
15 vs.)
16 MIKE SEADLER, individually and in)
his capacity as a Santa Clara police)
officer; CLYDE CHENG, individually)
and in his capacity as a Santa Clara)
police officer, ALEX TORKE,)
individually and in his capacity as a)
Santa Clara police officer; A. WOLF,)
individually and in his capacity as a)
Santa Clara police officer; S.)
MAJOROS, individually and in his)
capacity as a Santa Clara police)
officer; T. SHEARER, individually)
and in his capacity as a Santa Clara)
police officer; J. FANUCCHI,)
individually and in his capacity as a)
Santa Clara police officer; T.)
NIESEN, individually and in his)
capacity as a Santa Clara police)
officer; M. OVER, individually and in)
his capacity as a Santa Clara police)
officer; DAN WINTER, individually)
and in his capacity as a Santa Clara)
police officer; A. LANGE, individually)
and in his capacity as a Santa Clara)
police officer; R. CIRAURO,)
individually and in his capacity as a)
Santa Clara police officer; J.)
DEFENDANTS' ANSWER TO COMPLAINT
FOR VIOLATION OF CIVIL RIGHTS
DEMAND FOR JURY TRIAL

1 MASTILOCK, individually and in his)
 2 capacity as a Santa Clara police)
 3 officer; A. LAYTON, individually and)
 4 in his capacity as a Santa Clara)
 5 police officer; J. GREEN, individually)
 6 and in his capacity as a Santa Clara)
 7 police officer; D. RUSH, individually)
 8 and in his capacity as a Santa Clara)
 9 police officer; F. SAUNDERS,)
 10 individually and in his capacity as a)
 11 Santa Clara police officer; D.)
 12 MACHADO, individually and in his)
 13 capacity as a Santa Clara police)
 14 officer; J. OLIVER, individually and in)
 15 his capacity as a Santa Clara police)
 officers, the true names and exact)
 numbers of whom are unknown at)
 this time; CITY OF SANTA CLARA,)
 a municipal corporation,)
 16 Defendants.)
 17)
 18)
 19)
 20)
 21)
 22)

16 Defendants MIKE SEADLER, CLYDE CHENG, ALEX TORKE, ALAN WOLF,
 17 STEVEN MAJOROS, TYSON SHEARER, JOHNNY FANUCCHI, TRAVIS NIESEN,
 18 MARTIN OVER, DAN WINTER, ALAEC LANGE, ROBERT CIRAULO, JOHN
 19 MASTILOCK, ANTHONY LAYTON, JOHANNA GREEN, DEREK RUSH, FRANK
 20 SAUNDERS, DAVID MACHADO, JOE OLIVER, BRYAN STERKEL, AND CITY OF
 21 SANTA CLARA answer Plaintiff's *Complaint for Violation of Civil Rights* ("the Complaint"),
 22 as follows:

23 **JURISDICTION**

24 1. In answer to Paragraph 1 of the Complaint, Defendants acknowledge the
 25 jurisdiction of the United States District Court. Defendants deny any unlawful acts or
 26 practices.

27 **PARTIES**

28 2. In answer to Paragraph 2 of the Complaint, Defendants do not have

1 sufficient information to respond, and accordingly deny the allegations stated therein.

2 3. In answer to Paragraph 3 of the Complaint, Defendants admit the allegations
3 contained therein.

4 4. In answer to Paragraph 4 of the Complaint, Defendants admit that the
5 individual defendants were employed as police officers for the City of Santa Clara, but lack
6 sufficient information to respond to the allegations regarding color of law and course and
7 scope of employment, and therefore denies those allegations. Defendants deny the
8 allegations contained within the last sentence of Paragraph 4.

9 5. In answer to Paragraph 5 of the Complaint, Defendants admit that there was
10 a police encounter on September 18, 2007 at the Bank of America located at 2900 El
11 Camino Real in the City of Santa Clara that possibly involved Plaintiff and/or her
12 grandson, but do not have sufficient information to respond, and accordingly deny the
13 allegations stated therein.

14 6. In answer to Paragraph 6 of the Complaint, Defendants do not have
15 sufficient information to respond, and accordingly deny the allegations stated therein.

16 7. In answer to Paragraph 7 of the Complaint, Defendants admit that an
17 occupant of a vehicle in the parking lot, possibly Plaintiff, was ordered out of her vehicle.
18 Defendants do not have sufficient information to respond to the balance of the Paragraph,
19 and accordingly deny the allegations stated therein.

20 8. In answer to Paragraph 8 of the Complaint, Defendants admit that an
21 occupant of a vehicle in the parking lot, possibly Plaintiff, was ordered out of her vehicle
22 and the officers had weapons drawn. Defendants do not have sufficient information to
23 respond to the balance of the Paragraph, and accordingly deny the allegations stated
24 therein.

25 9. In answer to Paragraph 9 of the Complaint, Defendants do not have
26 sufficient information to respond, and accordingly deny the allegations stated therein.

27 10. In answer to Paragraph 10 of the Complaint, Defendants deny the
28 allegations contained therein.

1 11. In answer to Paragraph 11 of the Complaint, Defendants do not have
2 sufficient information to respond, and accordingly deny the allegations stated therein.

3 12. In answer to Paragraph 12 of the Complaint, Defendants do not have
4 sufficient information to respond, and accordingly deny the allegations stated therein.

5 13. In answer to Paragraph 13 of the Complaint, Defendants deny the
6 allegations contained therein.

7 14. In answer to Paragraph 14 of the Complaint, Defendants deny the
8 allegations contained therein.

FIRST CLAIM FOR RELIEF

11 15. In answer to Paragraph 15 of the Complaint, there are no charging
12 allegations upon which to respond.

13 16. In answer to Paragraph 16 of the Complaint, Defendants deny the
14 allegations contained therein.

15 17. In answer to Paragraph 17 of the Complaint, Defendants deny the
16 allegations contained therein.

SECOND CLAIM FOR RELIEF

18. In answer to Paragraph 18 of the Complaint, there are no charging
allegations upon which to respond.

20 19. In answer to Paragraph 19 of the Complaint, Defendants deny the
21 allegations contained therein.

22 20. In answer to Paragraph 20 of the Complaint, Defendants deny the
23 allegations contained therein.

THIRD CLAIM FOR RELIEF

25 21. In answer to Paragraph 21 of the Complaint, there are no charging
26 allegations upon which to respond

27 22. In answer to Paragraph 22 of the Complaint, Defendants admit that an
28 occupant of a vehicle, possibly Plaintiff, was ordered from her vehicle with weapons

1 drawn. Defendants deny the remaining allegations contained therein.

2 23. In answer to Paragraph 23 of the Complaint, Defendants deny the
3 allegations contained therein.

4 24. In answer to Paragraph 24 of the Complaint, Defendants deny the
5 allegations contained therein.

FOURTH CLAIM FOR RELIEF

7 25. In answer to Paragraph 25 of the Complaint, there are no charging
8 allegations upon which to respond.

9 26. In answer to Paragraph 26 of the Complaint, Defendants do not have
10 sufficient information to respond to the allegation regarding a December 27, 2003
11 encounter, and therefore deny that allegation. Defendants deny the remaining allegations
12 contained therein.

13 27. In answer to Paragraph 27 of the Complaint, Defendants deny the
14 allegations contained therein.

15 28. In answer to Paragraph 28 of the Complaint, Defendants deny the
16 allegations contained therein.

FIFTH CLAIM FOR RELIEF

18 29. In answer to Paragraph 29 of the Complaint, there are no charging
19 allegations upon which to respond.

20 30. In answer to Paragraph 30 of the Complaint, Defendants deny the
21 allegations contained therein.

22 31. In answer to Paragraph 31 of the Complaint, Defendants deny the
23 allegations contained therein.

SIXTH CLAIM FOR RELIEF

25 32. In answer to Paragraph 32 of the Complaint, there are no charging
26 allegations upon which to respond.

27 33. In answer to Paragraph 33 of the Complaint, Defendants deny the
28 allegations contained therein.

1 34. In answer to Paragraph 34 of the Complaint, Defendants deny the
2 allegations contained therein.

3 35. In answer to Paragraph 35 of the Complaint, Defendants deny the
4 allegations contained therein.

SEVENTH CLAIM FOR RELIEF

6 36. In answer to Paragraph 36 of the Complaint, there are no charging
7 allegations upon which to respond.

8 37. In answer to Paragraph 37 of the Complaint, Defendants deny the
9 allegations contained therein.

EIGHTH CLAIM FOR RELIEF

11 38. In answer to Paragraph 38 of the Complaint, there are no charging
12 allegations upon which to respond.

13 39. In answer to Paragraph 39 of the Complaint, Defendants deny the
14 allegations contained therein.

15 40. In answer to Paragraph 40 of the Complaint, Defendants deny the
16 allegations contained therein.

17 41. In answer to Paragraph 41 of the Complaint, Defendants deny the
18 allegations contained therein.

NINTH CLAIM FOR REIEFF

20 42. In answer to Paragraph 42 of the Complaint, there are no charging
21 allegations upon which to respond

22 43. In answer to Paragraph 43 of the Complaint, Defendants deny the
23 allegations contained therein.

24 44. In answer to Paragraph 44 of the Complaint, Defendants deny the
25 allegations contained therein.

26 45. In answer to Paragraph 45 of the Complaint, Defendants deny the
27 allegations contained therein.

¹⁶ In answer to Paragraph 46 of the Complaint, Defendants deny the

1 || allegations contained therein.

AFFIRMATIVE DEFENSES

3 AS AND FOR A FIRST AFFIRMATIVE DEFENSE, the Complaint fails to state a
4 claim upon which relief can be granted.

5 AS AND FOR A SECOND AFFIRMATIVE DEFENSE, Plaintiff was careless and
6 negligent in and/or about the matters referred to in said Complaint, and further that the
7 Plaintiff failed to exercise ordinary or any care for Plaintiff's own safety and such
8 carelessness and negligence on the part of Plaintiff proximately caused and contributed to
9 the damage, detriment or injury sustained by Plaintiff , if any, and that Plaintiff's recovery
10 should therefore either be barred or reduced to the extent of her negligence.

11 AS AND FOR A THIRD AFFIRMATIVE DEFENSE, any harm suffered was a result
12 of a negligent or otherwise wrongful conduct of persons other than Defendants and that
13 the conduct of the person other than Defendants was the sole and proximate cause of the
14 injuries and damages alleged by Plaintiffs.

15 AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, all actions taken by
16 Defendants, including actions of DOE Defendants, were undertaken in good faith and with
17 a reasonable belief that the actions were valid, necessary, constitutionally proper and
18 objectively reasonable for a police officer in the same circumstances, entitling Defendants
19 to qualified immunity from Plaintiff's claimed injuries and damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, Plaintiff has failed to mitigate her damages, if any.

22 AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, Defendants are immune from
23 the state law causes of action pursuant to Government Code §§800-1000, including but
24 not limited §§820.2, 820.4, 820.8, 821.6, 821.8, and 822.2. Defendants are further
25 immune by virtue of Penal Code §836.5(b) and §847.

26 AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, Defendants allege that
27 Plaintiff's Complaint is barred by the Doctrine of Unclean Hands.

28 AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, Defendants are entitled to

1 immunity under the Eleventh Amendment.

2 AS AND FOR A NINTH AFFIRMATIVE DEFENSE, Defendants contend that they
3 are immune from liability pursuant to the Federal Civil Rights Act because they were
4 acting in good faith and entertained a reasonable belief that its actions were necessary.

5 AS AND FOR A TENTH AFFIRMATIVE DEFENSE, Defendants contend that they
6 are immune pursuant to the principals of qualified immunity.

7 AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE, Defendants allege that
8 they have not deprived any person, including Plaintiff, of any right, privilege, or immunity
9 guaranteed by the Constitution or laws of the United States or the State of California, and,
10 therefore, Defendants are not liable.

11 AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE, any alleged use of force to
12 subdue and/or detain plaintiff was reasonable under the circumstances, and was in
13 defense to the improper actions of the plaintiff.

14 AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, Defendants were
15 objectively reasonable in light of the facts and circumstances confronting them, and their
16 conduct did not violate clearly established statutory or Constitutional rights of which a
17 reasonable person would have known.

18 WHEREFORE, Defendants prays as follows:

- 19 1. Dismissal of Plaintiff's Complaint with prejudice;
- 20 2. Plaintiff takes nothing by reason of her Complaint;
- 21 3. Defendants be awarded reasonable attorney's fees;
- 22 4. Defendants be awarded costs of suit; and,
- 23 5. For such other and further relief as the Court deems appropriate.

24 Dated: July 23, 2008

RANKIN, LANDSNESS, LAHDE,
SERVERIAN & STOCK

25
26 By: /s/ Jon A. Heaberlin
27 JON A. HEABERLIN
28 Attorney for Defendants

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2 **REQUEST FOR JURY TRIAL**

3 Defendants MIKE SEADLER, CLYDE CHENG, ALEX TORKE, ALAN WOLF,
4 STEVEN MAJOROS, TYSON SHEARER, JOHNNY FANUCCHI, TRAVIS NIESEN,
5 MARTIN OVER, DAN WINTER, ALAEC LANGE, ROBERT CIRAULO, JOHN M
6 ASTILOCK, ANTHONY LAYTON, JOHANNA GREEN, DEREK RUSH, FRANK
7 SAUNDERS, DAVID MACHADO, JOE OLIVER, BRYAN STERKEL AND CITY OF
8 SANTA CLARA hereby request a jury trial in this action.

9
10 Dated: July 23, 2008

RANKIN, LANDSNESS, LAHDE,
11 SERVERIAN & STOCK

12
13 By: /s/ Jon A. Heaberlin

14 JON A. HEABERLIN
Attorneys for Defendants

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